IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 127 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISHBHAI DULABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR RASESH SEJPAL for Petitioner

Mr K G Sheth, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/04/2001

ORAL JUDGEMENT

This is a Revision Application under section 397 of the Criminal Procedure Code, 1973 by the petitioner-original accused in Kosamba Police Station in C.R. No.25/2001 for offence punishable under section 489

read with section 114 of I.P.C. against the judgment and order dated 28.3.2001 recorded by the learned Addl.Sessions Judge, Surat in C.R. No.26/2001 under which the learned Addl.Sessions Judge allowed the said Revision Application partly with respect to the present petitioner and directed that the present petitioner be remanded to police custody for a period of six days and on completion thereof he shall be presented before the learned JMFC, Mangrol in Surat District. The facts may be briefly stated as follows:

2. A FIR was filed on 13.2.2001 at 7 p.m. against one Harishbhai Dulabhai Patel on the ground that certain fabricated currency notes were seized from him at 6.30 p.m. on 13.2.2001. Thereafter, the said accused Harishbhai was arrested and 46 currency notes of 100 Rupees denomination were seized from him. It appears from the information received by the Investigating Officer, other accused persons were arrested and thereafter on 15.2.2001, the present petitioner was also arrested at 9 p.m. It is the case of the prosecution that 192 currency notes of 100 rupees denomination were also seized from him and they were all found to be fabricated. Thereafter the present petitioner was presented before the learned JMFC, Mangrol on 16.2.2001 and at the time of his presentment before the learned Magistrate, an application was made by the Investigating Police Officer that the present petitioner be entrusted to police custody for 10 days. The application was partly allowed and police remand was granted in pursuant to the said application. On completion of the said period of police remand granted by the learned Magistrate, the petitioner was again presented before the learned Magistrate on 19.2.2001 and a further remand in police custody was sought for 10 days. The learned Magistrate, after hearing the parties, granted police remand for a period of three days which expired on 22.2.2001. On 22.2.2001, the present petitioner was presented before the learned Magistrate and further remand was also sought requesting the learned Magistrate that the petitioner be remanded to the police custody. The learned Magistrate dismissed the said application of the Investigating Police Officer by order dated 22.2.2001. The learned Magistrate also directed that the petitioner be taken in judicial custody.

3. Feeling aggrieved by the said order of the learned Magistrate, the State preferred Criminal Revision Application being Criminal Revision Application No. 26/2001 on 23.2.2001 before the learned Addl.Sessions Court at Surat. Learned Addl. Sessions Judge, who heard

the Criminal Revision Application No.26/2001, allowed the same and directed that the present petitioner be remanded to police custody for six days and on completion, thereof he should be presented before the learned JMFC, Mangrol.

4. Feeling aggrieved by the said judgment and order of the learned Addl.Sessions Judge, the petitioner has preferred this Revision before this court under section 397 of the Criminal Procedure Code, 1973 (for short, 'the Code'). It has mainly been contended here that the learned Magistrate has already exercised his jurisdiction in favour of the present petitioner and there was no necessity for the learned Addl.Sessions Judge to take a different view. That the learned Addl.Sessions Judge had very limited power to be exercised while hearing the Revision Application. That the learned Addl.Sessions Judge has not properly appreciated the position that the police remand should not be more than 15 days from the date of first arrest. That on the whole, the judgment and order of the learned Addl. Sessions Judge are illegal and erroneous and deserve to be set aside. It is, therefore, prayed that this Revision Application be allowed and the judgment and order of the learned Addl.Sessions Judge be set aside.

5. On receiving the Revision Application, Rule was issued and service of rule was waived and thereafter Mr K G Sheth, learned APP sought for time for preparation in the matter which was granted and interim relief was granted for the stay of operation of the order passed by the learned Addl.Sessions Judge. Today, I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate appearing for the petitioner has argued at length that the learned JMFC had already exercised his jurisdiction and, therefore, there was no reason for exercise of jurisdiction by the learned Addl.Sessions Judge and his power and function and jurisdiction are very limited.

6. It is true that revisional jurisdiction is very limited but the learned Addl.Sessions Judge appears to have given reasons for differing from the view adopted by the learned Magistrate. It can be gathered from the order of the learned Magistrate that he has come to the finding that there was no necessity of granting further remand to the police custody. For that purpose, learned Magistrate has observed that most of the information has been gathered by the Investigating Officer and some other accused persons have also been arrested. It has also been observed that the Investigating Officer wanted further information as to how and from where the computer

and other stationery items have been obtained and though the present petitioner does not have technical knowledge about the functioning of the computer as to how he prepared the currency notes by use of the computer. The learned Magistrate found that for this sort of information, police remand was not necessary. Learned Magistrate also found that the remand so sought was also on the ground that other currency notes were required to be seized and for that purpose also police remand should not have been given. Now it may be treated that an accused person may not be remanded to police custody solely with a view to get muddamal articles but here it can be gathered that police remand sought is not merely for getting muddamal articles. Police remand has been sought with a view to elicit further information with respect to muddamal article and also with respect to other accused persons and these two things may connect the petitioner with the crime also. Therefore, the said information was required for the purpose of further investigation in the matter.

7. It has been contended here that such information can be gathered from the petitioner even when he is not in police custody. At the same time, it has to be considered here that custodial interrogation is a valuable right of the Investigating Agency and interrogation of an accused person while in police custody and his interrogation while in police custody and in judicial custody are quite different things. Therefore, when certain information can be sought and gathered while undertaking custodial interrogation then such type of applications are required to be considered from that angle. Simply because the information can be gathered even when the accused is in judicial custody, that would be no ground for refusing police custody in all cases. Moreover, it is found that on account of the aforesaid interrogation and investigation, the currency notes have been seized in sizeable numbers and other currency notes are required to be seized and they are part and parcels of the investigation. In that view of the matter, it cannot be said that the remand to the police custody was not necessary in the interest of the investigation against the petitioner.

8. It has also been contended that the police remand cannot be extended beyond a period of 15 days. For this purpose, a decision of the Apex Court in the case of Central Bureau of Investigation v. Anupam Kulkarni, reported in (1992) 3 SCC 141 has been cited on behalf of the petitioner. There it has been observed that total period of 15 days is required to be considered. At the

same time, if we look at the situation in the present case, it would be clear that the petitioner was arrested on 15.2.2001. He was presented before the learned Magistrate and police remand was obtained on 16.2.2001. Again he was presented before the learned Magistrate on 19.2.2001 and police remand was obtained upto 22.2.2001. The petitioner was again presented before the learned Magistrate on 22.2.2001. On that day, further remand was sought but the learned Magistrate refused to remand the petitioner to the police custody by order dated 22.2.2001. Therefore, between 15.2.2001 and 22.2.2001, the petitioner was in police custody.

9. Then it has to be considered that soon after the learned Magistrate refused police remand on 22.2.2001, the Investigating agency has not remained silent. The aforesaid Criminal Revision Application No.26/2001 was preferred on the very next day i.e. on 23.2.2001. The learned Sessions Judge has disposed of the said Revision Application dated 28.3.2001. Mr K G Sheth, learned APP has argued that some time was sought on behalf of the petitioner in the matter. There is nothing on record to support the said contention. Any way, the learned Sessions Judge has taken some time in disposing of the said Revision Application. If there is nothing on record to show that the petitioner had sought time for arguing the Revision Application, same way there is no material to show that the State had obtained time for arguing the matter. Therefore, on both the sides there is nothing on record to show that the delay occurred on account of any act or omission on the part of the petitioner or on the part of the State. The fact remains that the Court has taken time in disposing of the Revision. Now here the matter has been filed promptly before the Court and if there is some delay in disposing of the said matter by the Court and if the delay is not attributable to the State, then it cannot be said that the period spent in the Court should not be excluded. After all the State has contended before the learned Addl.Sessions Judge that the present petitioner was involved in a similar offence in C.R. No.69/2000 and, therefore, he was acquainted with this type of offence also.

10. After all the remaining muddamal articles i.e. fabricated currency notes are required to be seized and they are required to be seized as part of investigation to connect the present petitioner with the offence in question. Same way, other information can also be obtained from the present petitioner with respect to other muddamal articles as well as with respect to other accused persons. That would also link the petitioner

with the offence in question. Therefore, it cannot be said that the judgment and order recorded by the learned Addl.Sessions Judge are illegal. Apart from the said position, the learned APP has referred to a decision of this Court in Criminal Revision Application No.429/2000 dated 17.10.2000. The said matter also related to the remand of accused persons to police custody. There this Court (Coram: D C Srivastava,J.) has clearly laid down that "consequently, in such a case, refusal of police remand is certainly revisable, but granting police remand is not a case where the right of the prosecution or right of the accused has, in any way, been partly or wholly, adjudicated upon. Consequently it is not a final order against which no revision lies."

11. It would be clear that so far as revisional jurisdiction is concerned, it has been laid down under Section 397 (2) of the Code that powers of revision conferred by Section 397(1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings. Therefore, when this court has earlier decided that an order granting remand of accused persons to police custody would not be a final order and it has to be treated to be an interlocutory order, then in that event, it has to be taken into account that this court is bound by the principle laid down in an earlier decision of this court. Even judicial discipline requires that when there is a pronouncement of this court as matter of principle in an earlier matter, then this Court sitting as Single Judge, is required to follow the said principle enunciated in the earlier decision. Viewing the matter from that angle, it is clear that the order passed by the learned Addl.Sessions Judge is an interlocutory order in terms of the decision in the aforesaid Criminal Revision Application and, therefore, considering the provisions made in sub-section (2) of section 397 of the Code the present Revision Application is not maintainable under law. In the aforesaid view of the matter, I am of the view that it cannot be said that the learned Sessions Judge has committed illegality in passing the order in question. Moreover, as said above, the order in question is an interlocutory order. Therefore, the Revision does not lie.

12. For the aforesaid reasons. this Revision Application deserves to be dismissed and is accordingly dismissed. Rule discharged.

13. At this stage, learned Advocate appearing for the petitioner submits that the petitioner desires to

approach higher forum and, therefore, implementation and operation of the aforesaid order may be stayed for a period of two weeks. Considering the facts and circumstances of the case, implementation and operation of the aforesaid order i.e. enforcement and implementation of the impugned judgment and order of the learned Addl.Sessions Judge is ordered to be stayed upto 25.4.2001 and it will operate from the morning of 26.4.2001. Direct Service is permitted.

12.4.2001 [D P Buch, J.]
msp